



# The Judiciary



IT IS EMPHATICALLY THE  
PROVINCE AND DUTY OF  
THE JUDICIAL DEPARTMENT  
TO SAY WHAT THE LAW IS.

MARBURY v. MADISON

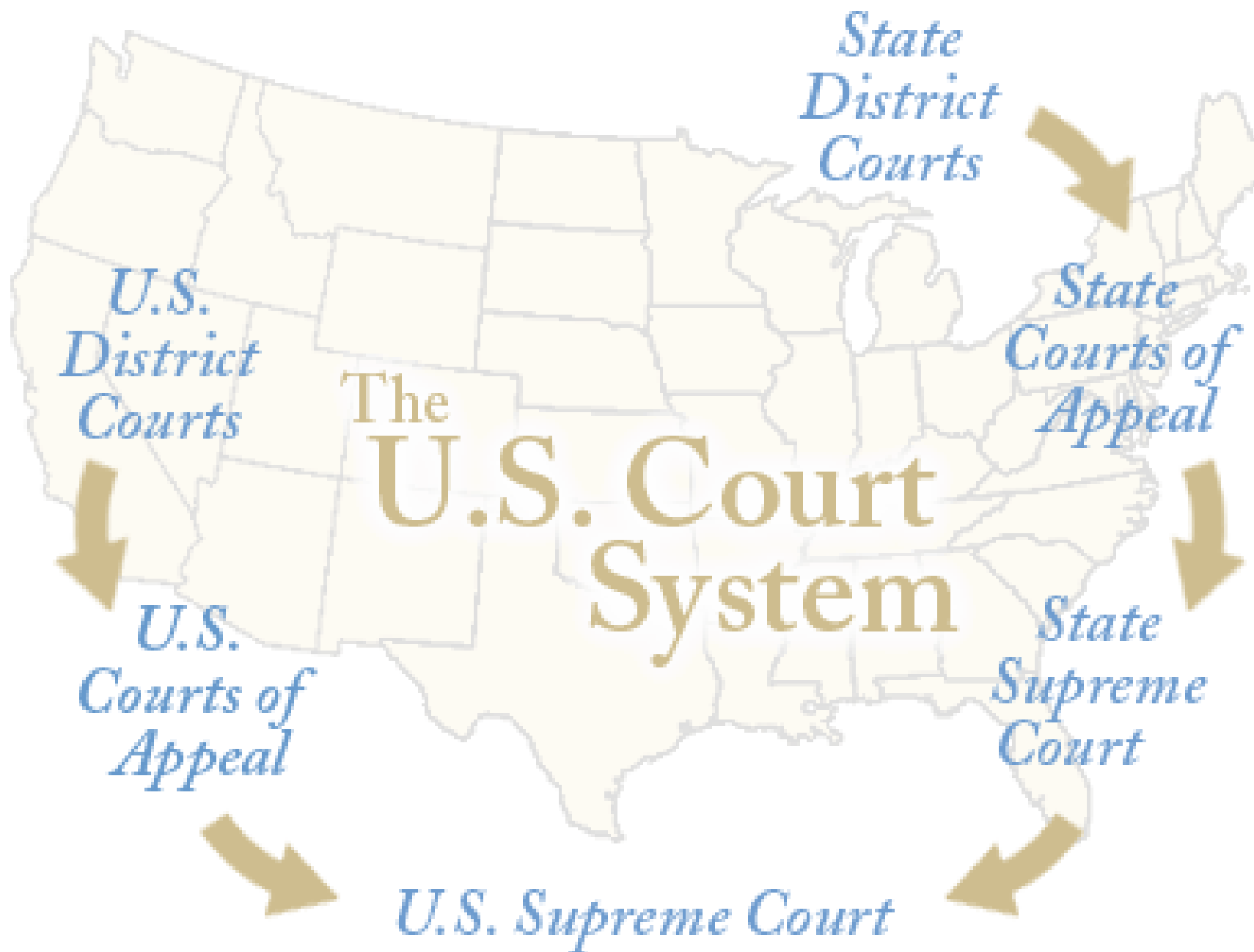
1803



# The U.S. Supreme Court

- All Justices are appointed by the President and confirmed by the Senate



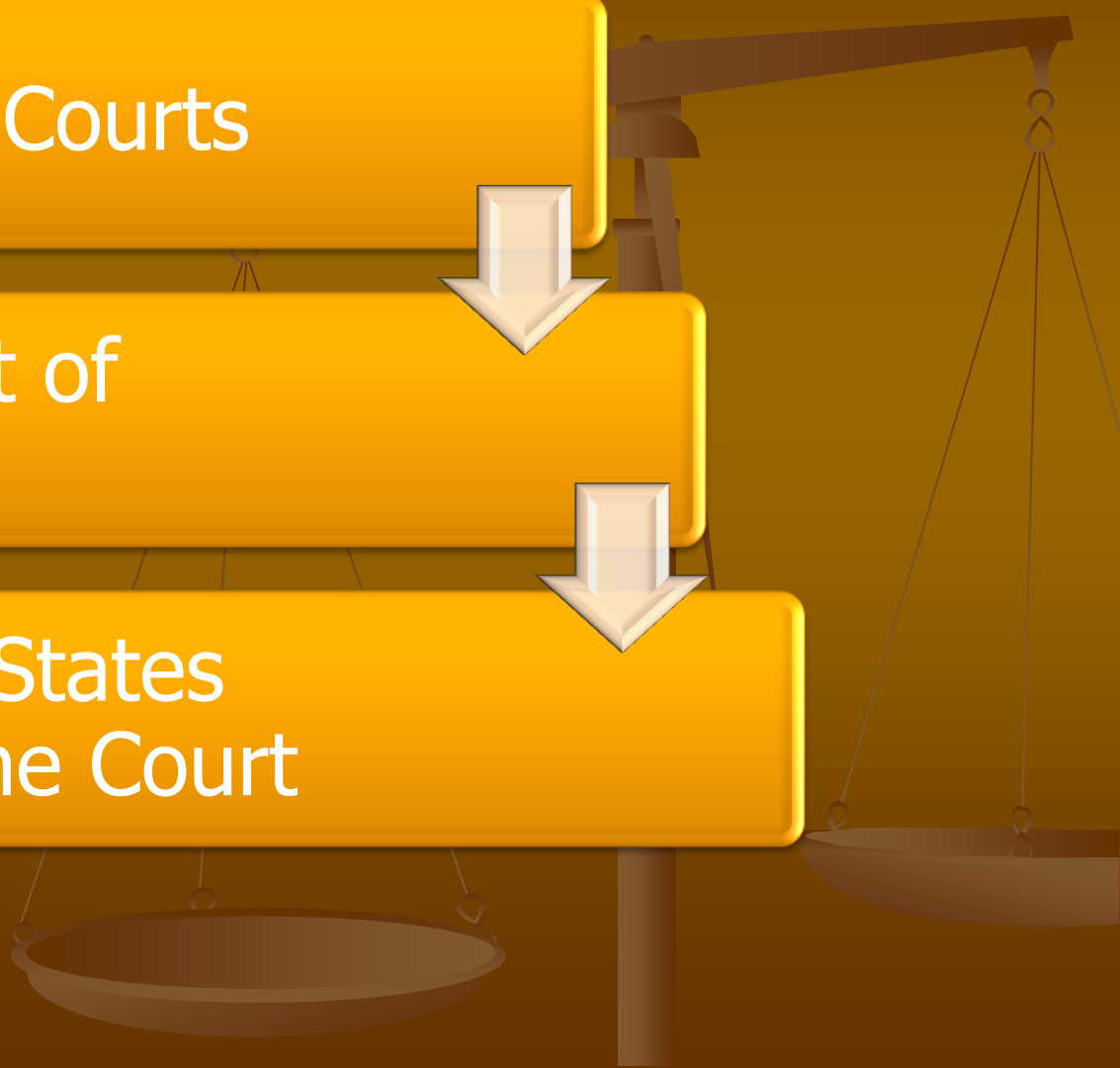


# Organization of Federal Court System

U.S. District Courts

U.S. Court of Appeals

United States Supreme Court





## Supreme Court

- Highest court in the federal system
- Nine Justices, meeting in Washington, D.C.
- Appeals jurisdiction through *certiorari* process
- Limited original jurisdiction over some cases



## Courts of Appeal

- Intermediate level in the federal system
- 12 regional "circuit" courts, including D.C. Circuit
- No original jurisdiction; strictly appellate

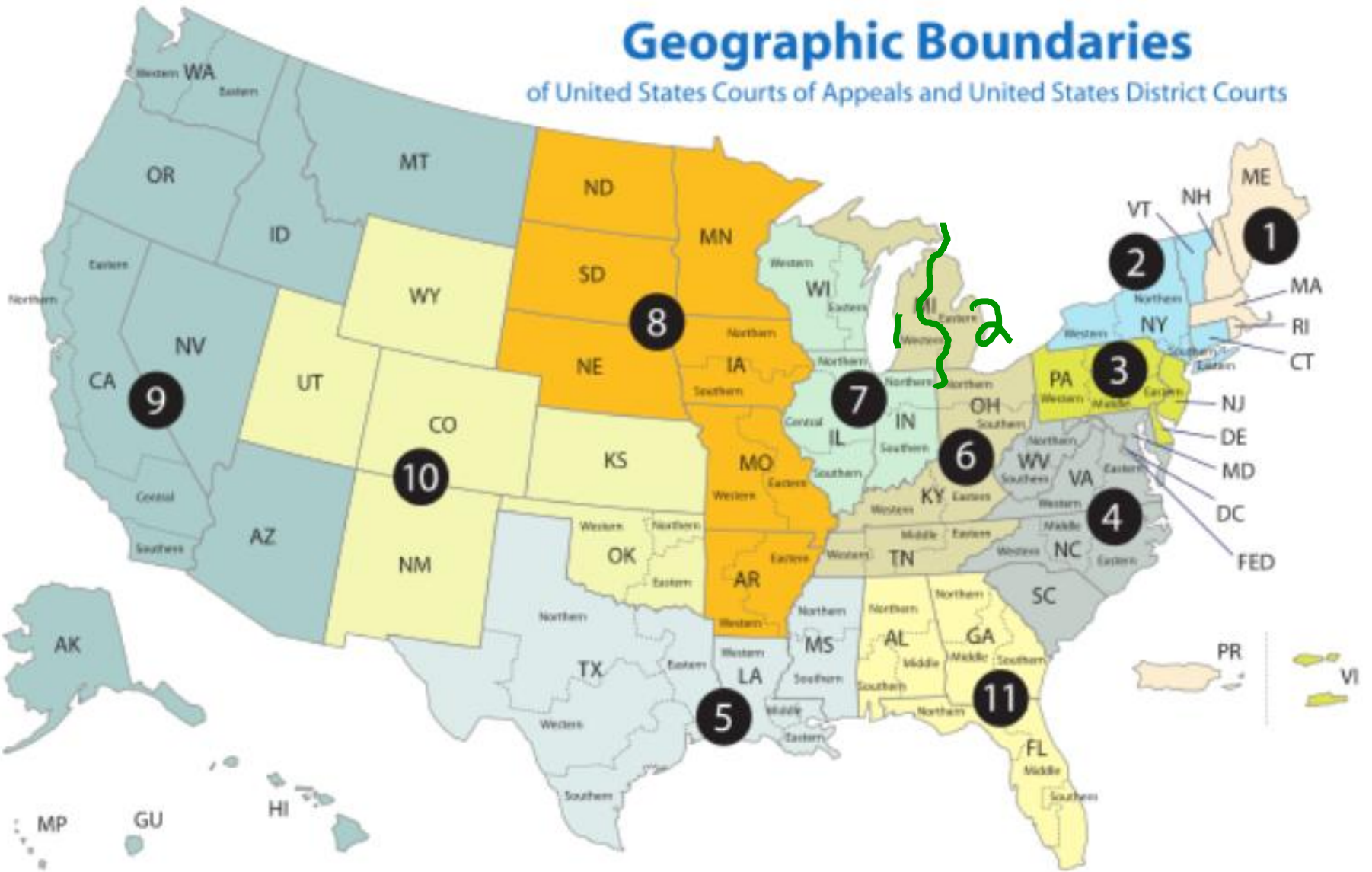


## District Courts

- Lowest level in the federal system
- 94 judicial districts in 50 states & territories
  - No appellate jurisdiction
- Original jurisdiction over most cases

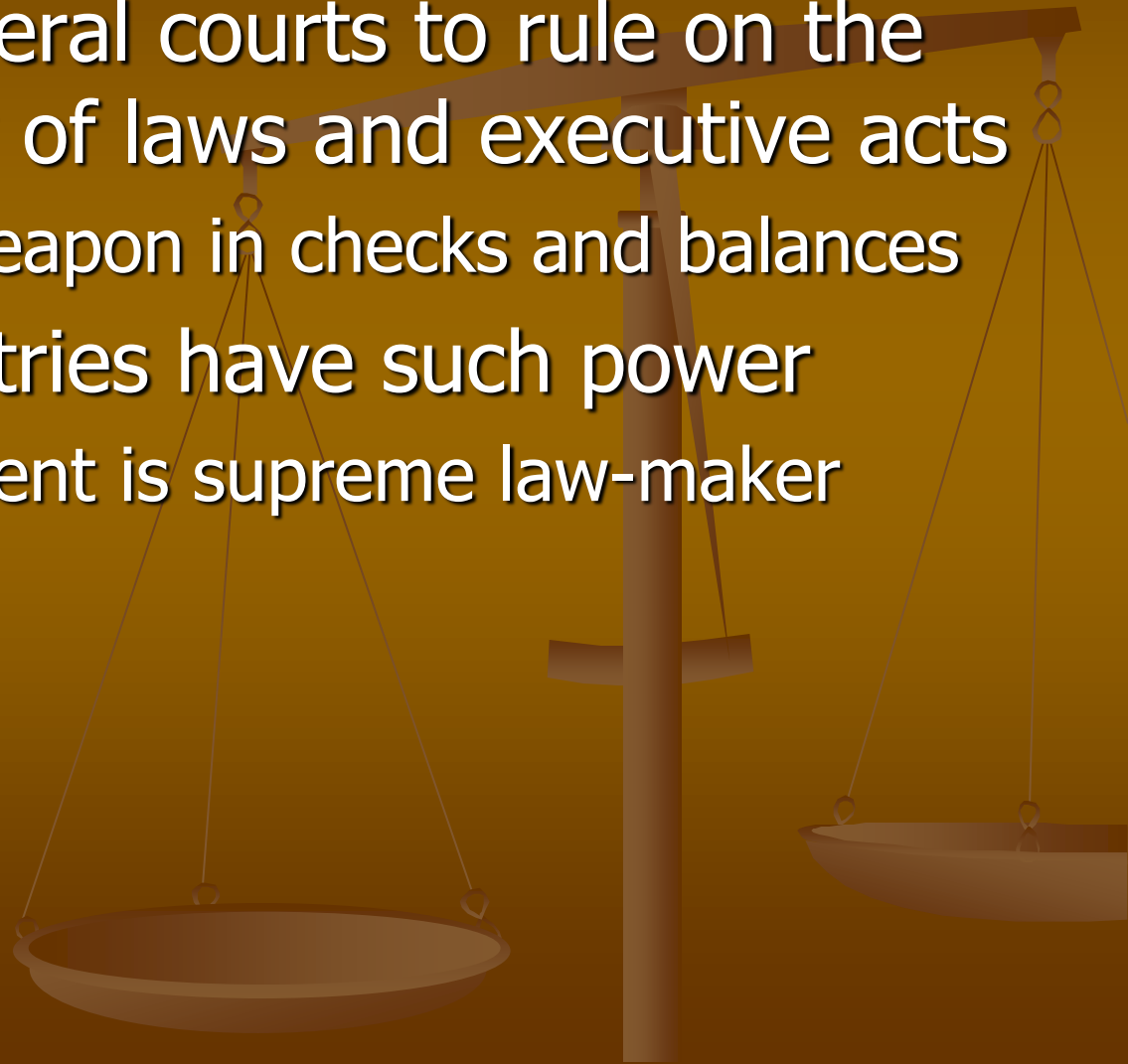
# Geographic Boundaries

of United States Courts of Appeals and United States District Courts



# Judicial Review

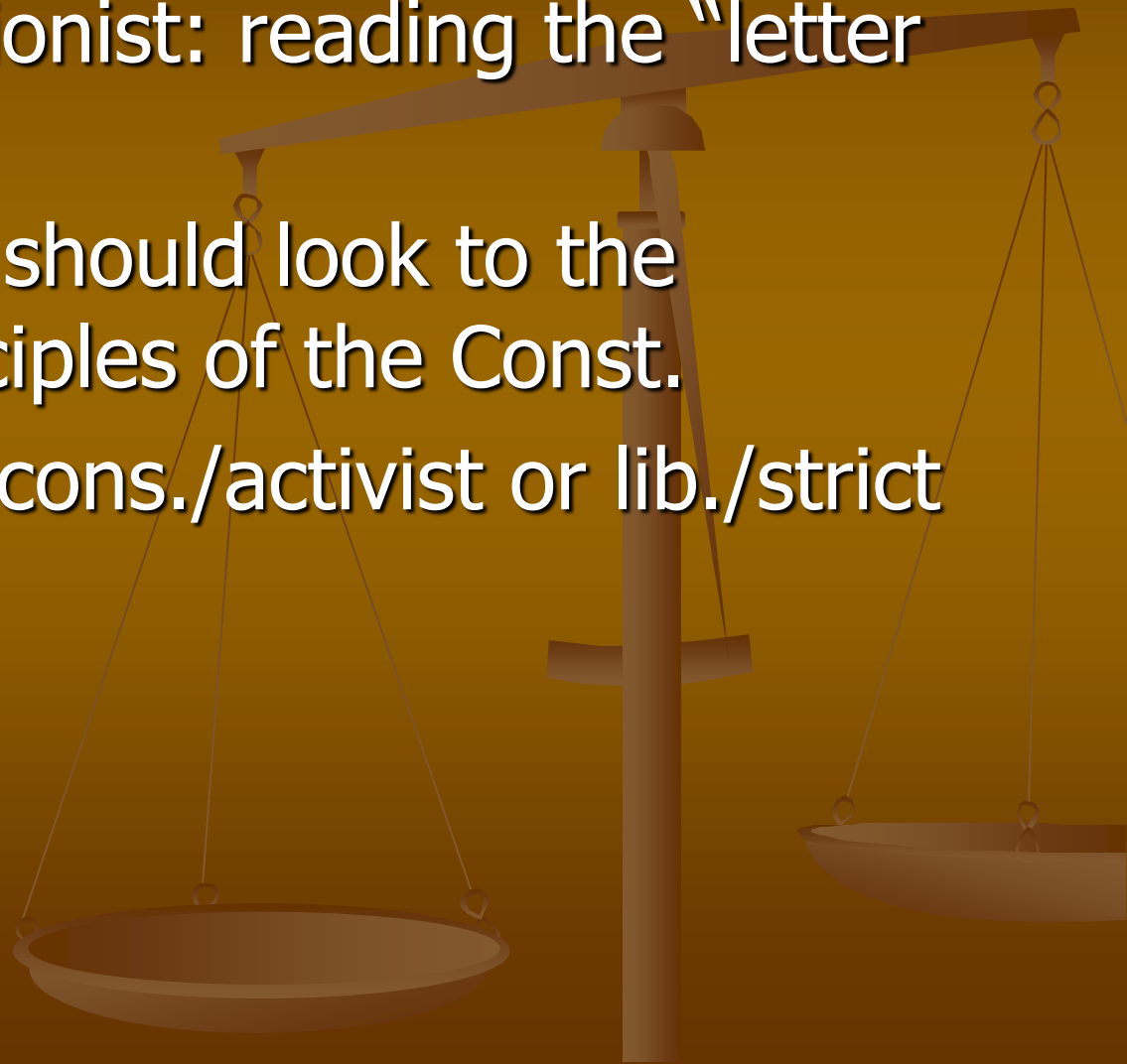
- The right of federal courts to rule on the constitutionality of laws and executive acts
  - Chief judicial weapon in checks and balances
- Few other countries have such power
  - Britain: parliament is supreme law-maker





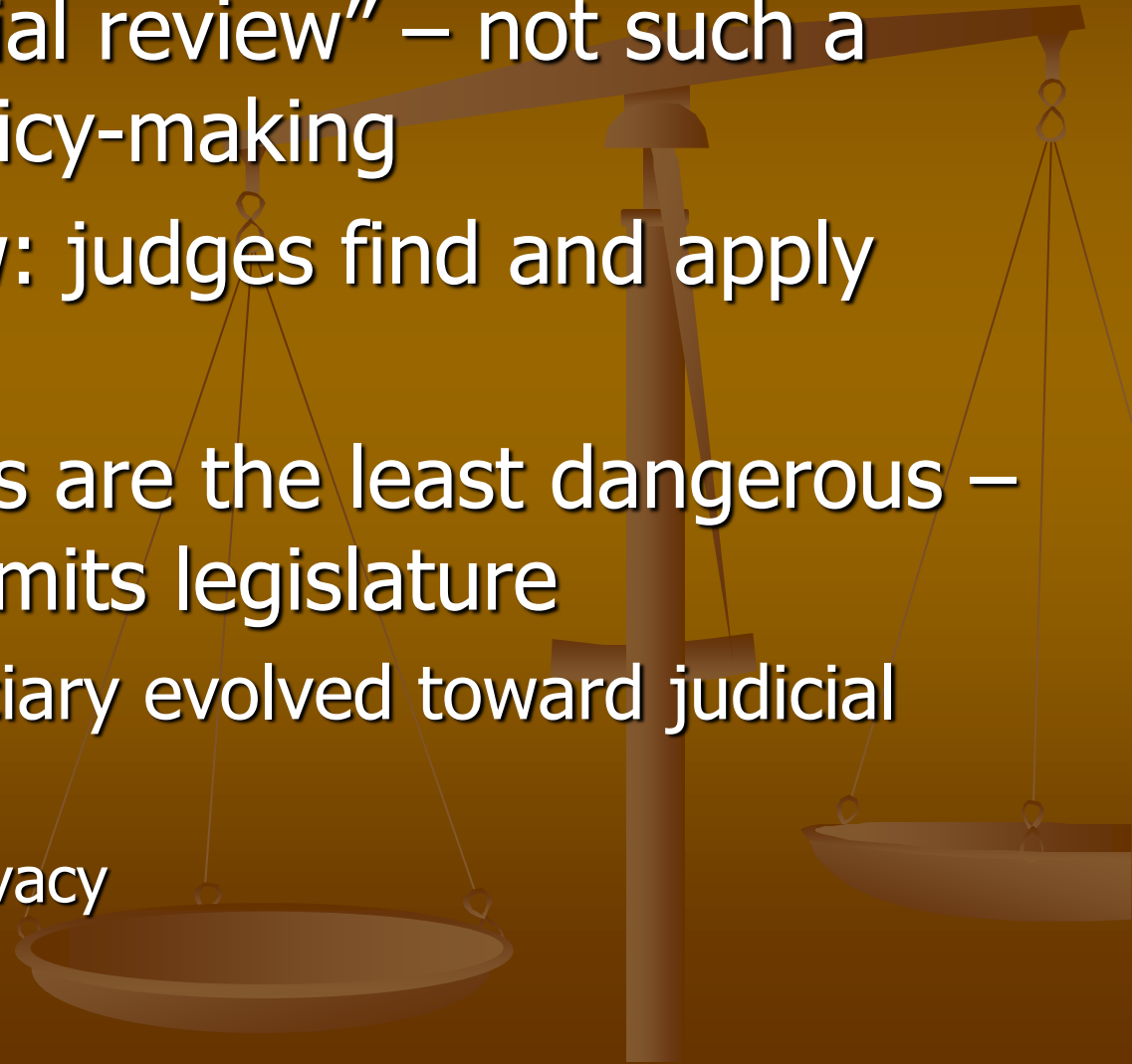
# Methods of Interpreting the Role of the Supreme Court

- Strict Constructionist: reading the “letter of the law”
- Activist: judges should look to the underlying principles of the Const.
- A judge can be cons./activist or lib./strict const.

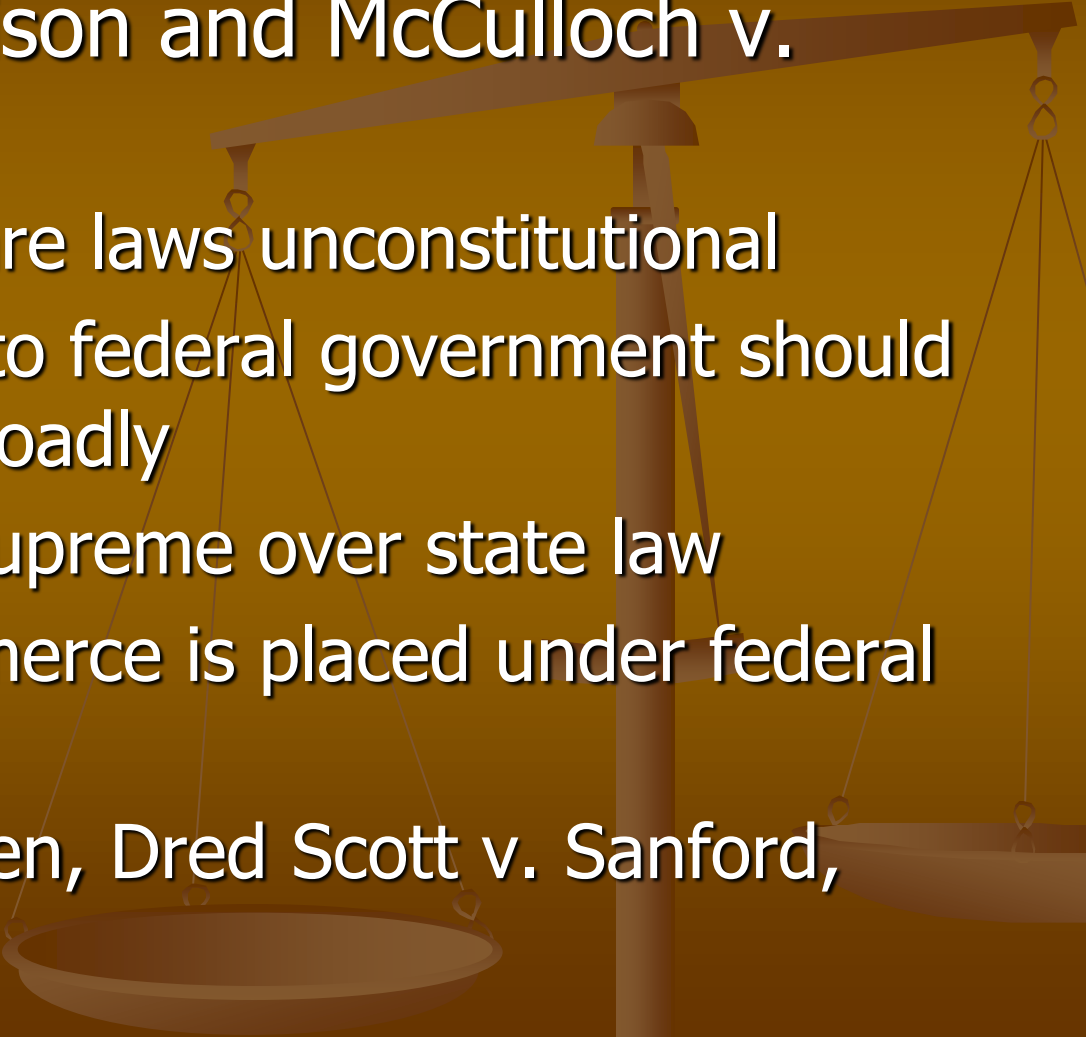


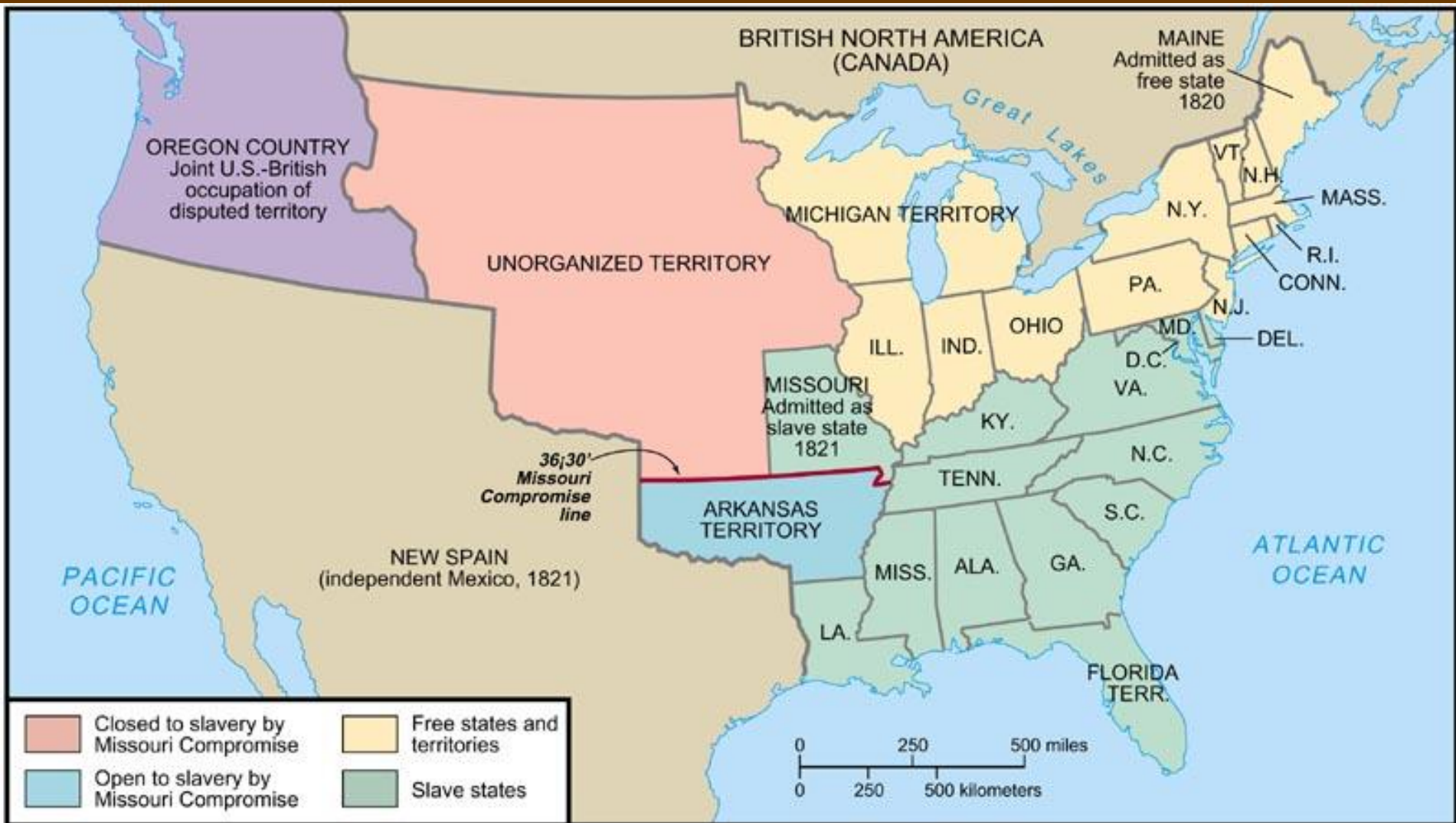
# Development of the Federal Court – Founders' Views

- Expected “judicial review” – not such a large role in policy-making
- Traditional View: judges find and apply existing law
- Hamilton: courts are the least dangerous – authority only limits legislature
  - Problem – judiciary evolved toward judicial activism
    - Ex: right to privacy



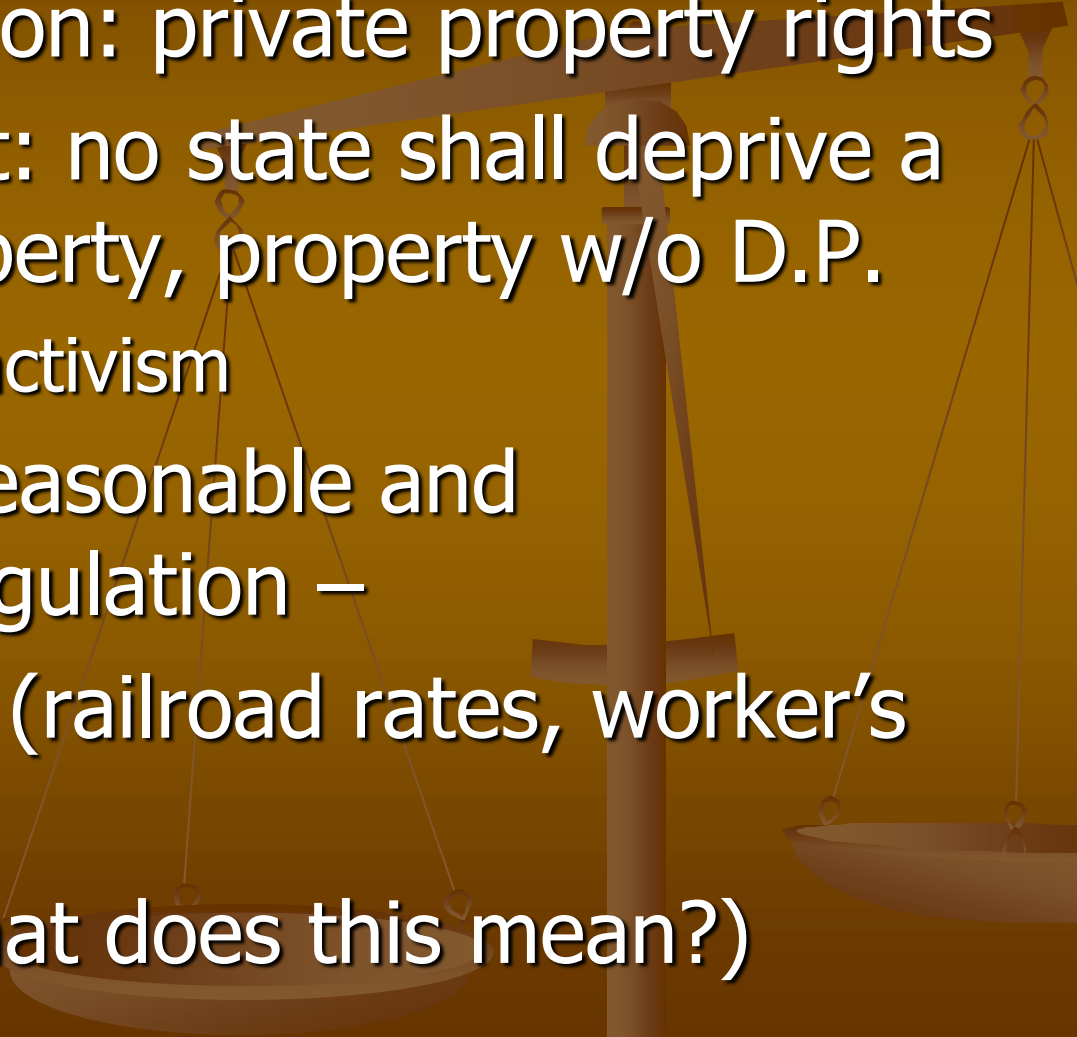
# National Supremacy and Slavery

- Marbury v. Madison and McCulloch v. Maryland
    - S.C. could declare laws unconstitutional
    - Power granted to federal government should be construed broadly
    - Federal law is supreme over state law
    - Interstate commerce is placed under federal law
    - Gibbons v. Ogden, Dred Scott v. Sanford, National Bank
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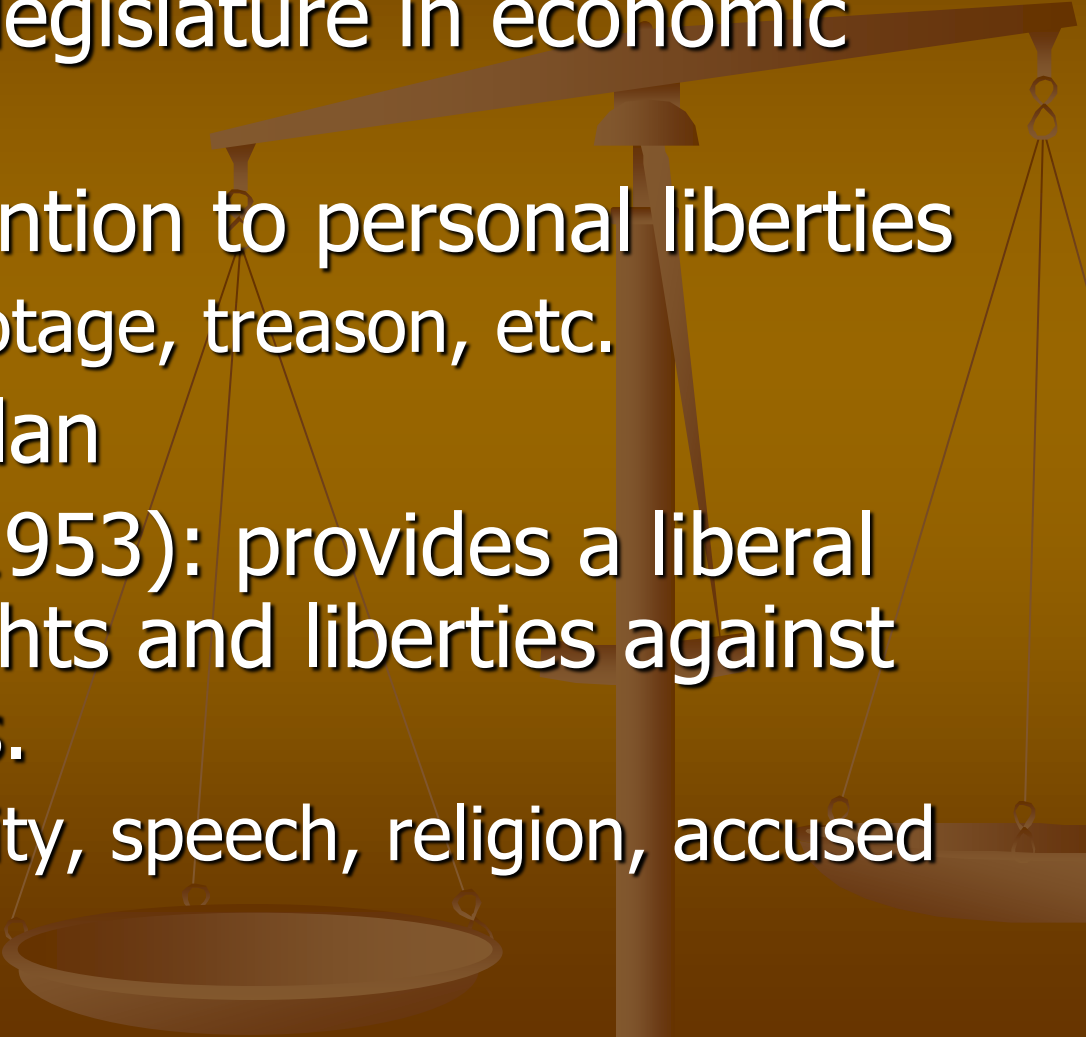


**THE MISSOURI COMPROMISE, 1820-1821**

# Government and the Economy 1865-1936

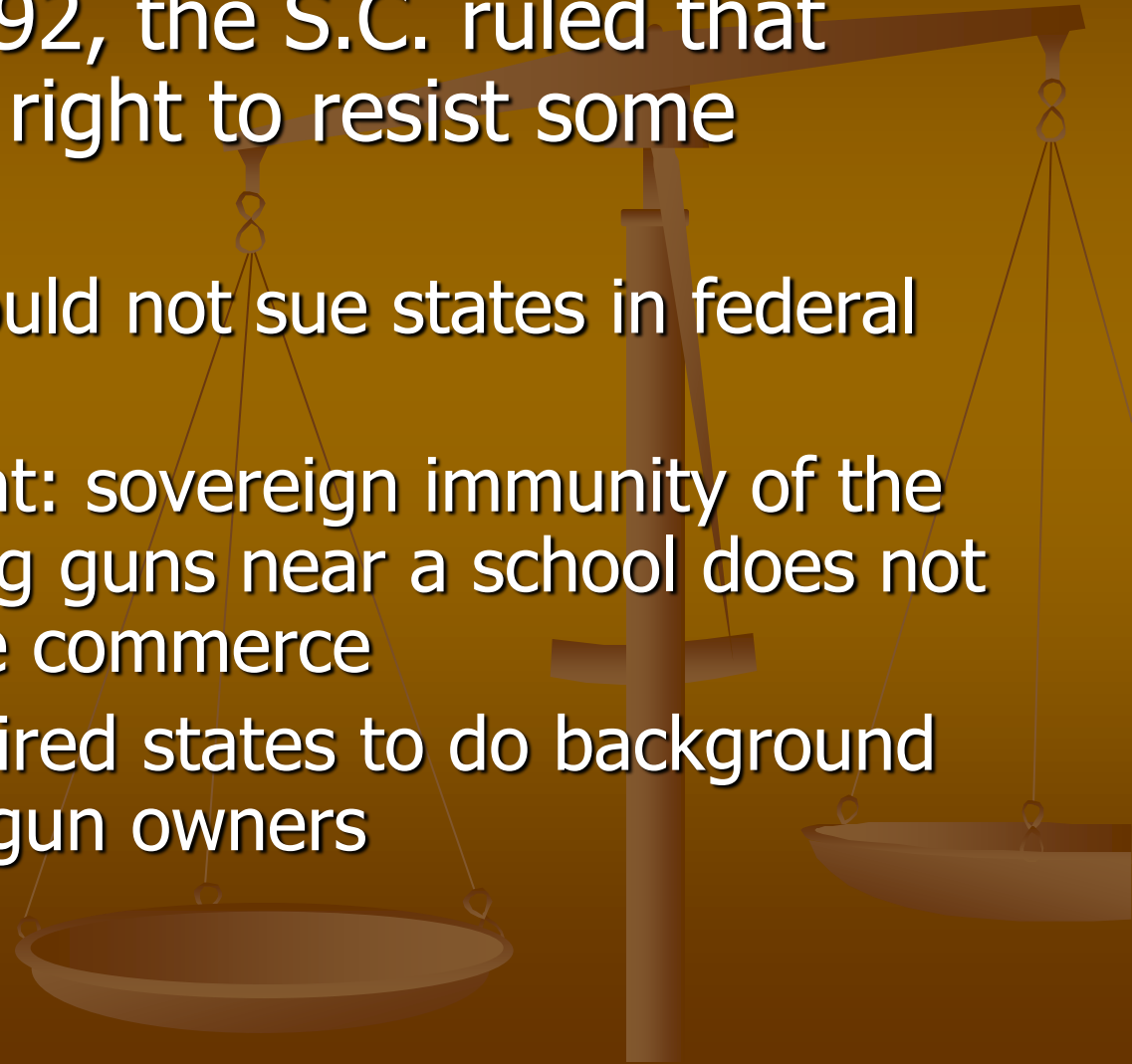
- Dominant question: private property rights
  - 14<sup>th</sup> Amendment: no state shall deprive a person of life, liberty, property w/o D.P.
    - Rise of judicial activism
  - S.C. unsure of reasonable and unreasonable regulation –
  - “public interest” (railroad rates, worker’s safety)
  - “interstate” (what does this mean?)
- 

# Government and Political Liberty: 1936 - Present

- Court defers to legislature in economic cases
  - Court shifts attention to personal liberties
    - Espionage, sabotage, treason, etc.
  - Court-Packing plan
  - Warren Court (1953): provides a liberal protection of rights and liberties against govt. trespasses.
    - Privacy, obscenity, speech, religion, accused
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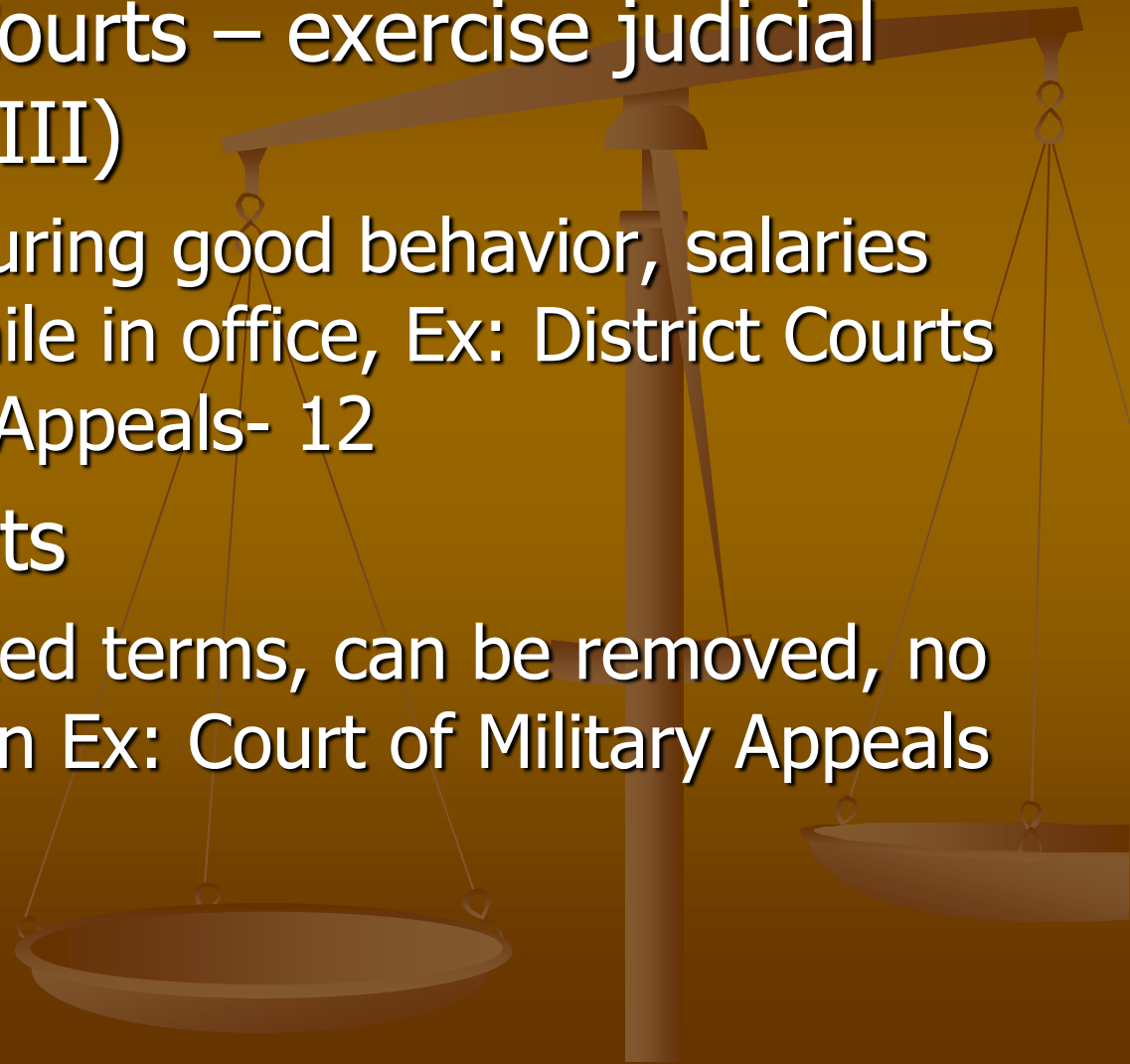
# The Revival of State Sovereignty

- Beginning in 1992, the S.C. ruled that states have the right to resist some federal action.
  - Indian tribes could not sue states in federal courts
  - 11<sup>th</sup> Amendment: sovereign immunity of the states – carrying guns near a school does not affect interstate commerce
  - Brady Bill: required states to do background checks of handgun owners



# The Structure of the Federal Courts

- Constitutional Courts – exercise judicial powers (Article III)
  - Judges serve during good behavior, salaries not reduced while in office, Ex: District Courts - 94, Courts of Appeals- 12
- Legislative Courts
  - Judges have fixed terms, can be removed, no salary protection Ex: Court of Military Appeals





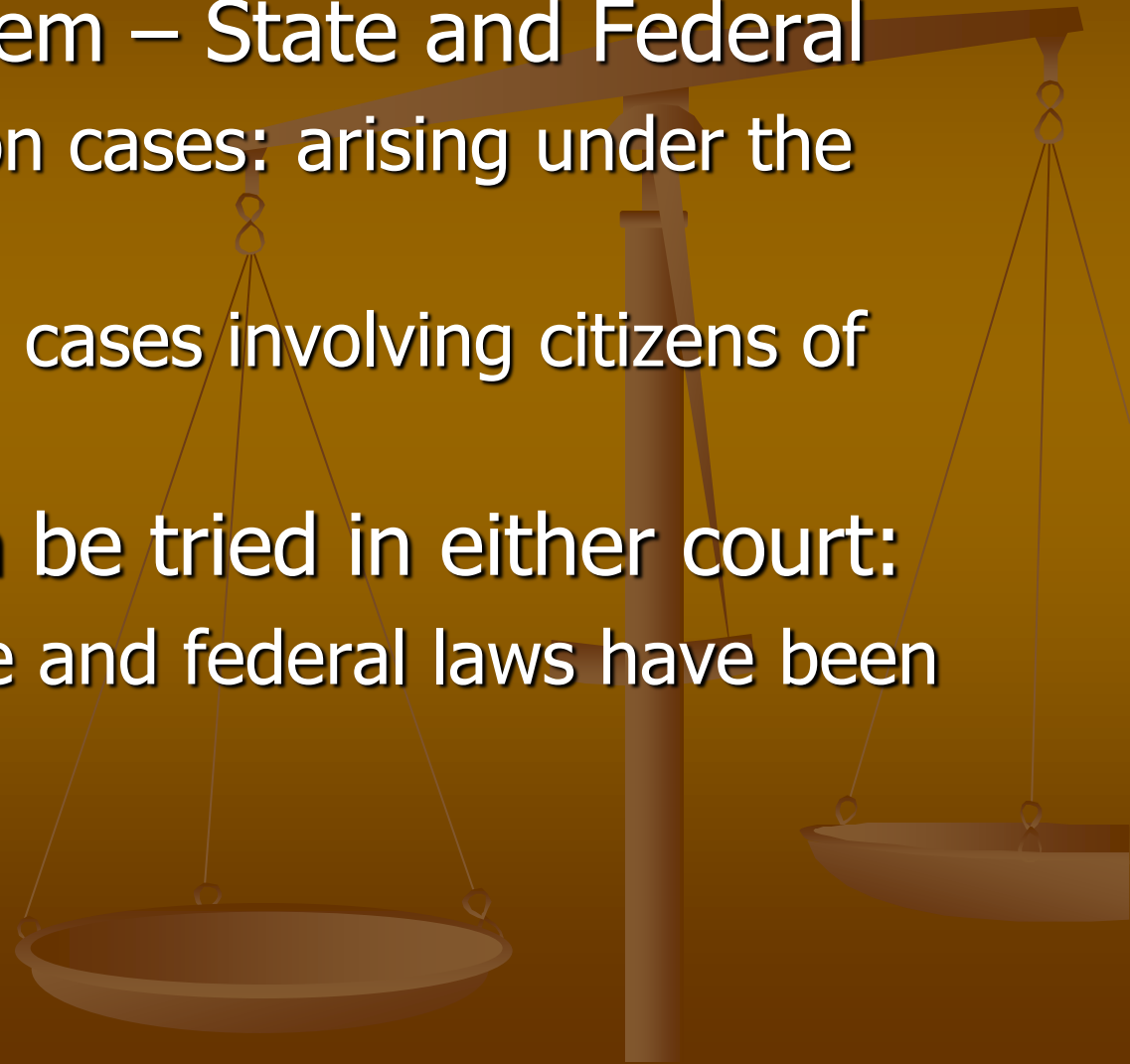
# Selecting Judges



1. Party Background: some effect on judicial behavior – facts of the case, precedent, lawyer's arguments
2. Senatorial Courtesy: appointees for federal courts are reviewed by senators from that state
  1. Veto = "blue slip"
3. The Litmus Test: share political ideology, has shown influence in lower courts, won't cause delays in Senate confirmation, impact on the Supreme Court

# The Jurisdiction of the Federal Courts

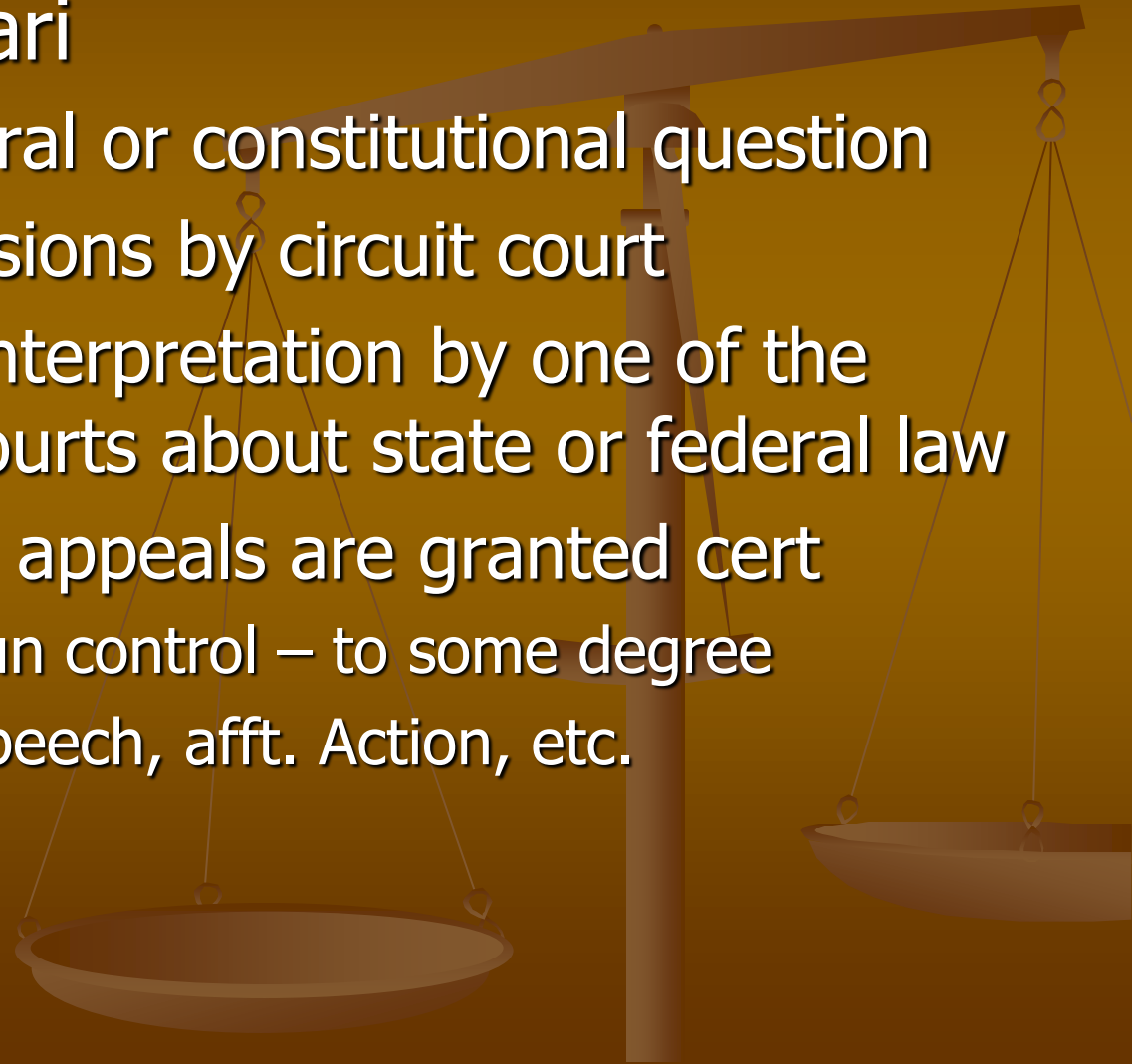
- Dual Court System – State and Federal
  - Federal Question cases: arising under the Constitution
  - Diversity cases: cases involving citizens of different states
- Some cases can be tried in either court:
  - Ex: if both state and federal laws have been broken



# Route to the Supreme Court

## ■ Writs of Certiorari

- Significant federal or constitutional question
- Conflicting decisions by circuit court
- Constitutional interpretation by one of the highest state courts about state or federal law
- Only about 100 appeals are granted cert
  - What is not: gun control – to some degree
  - What is: life, speech, afft. Action, etc.



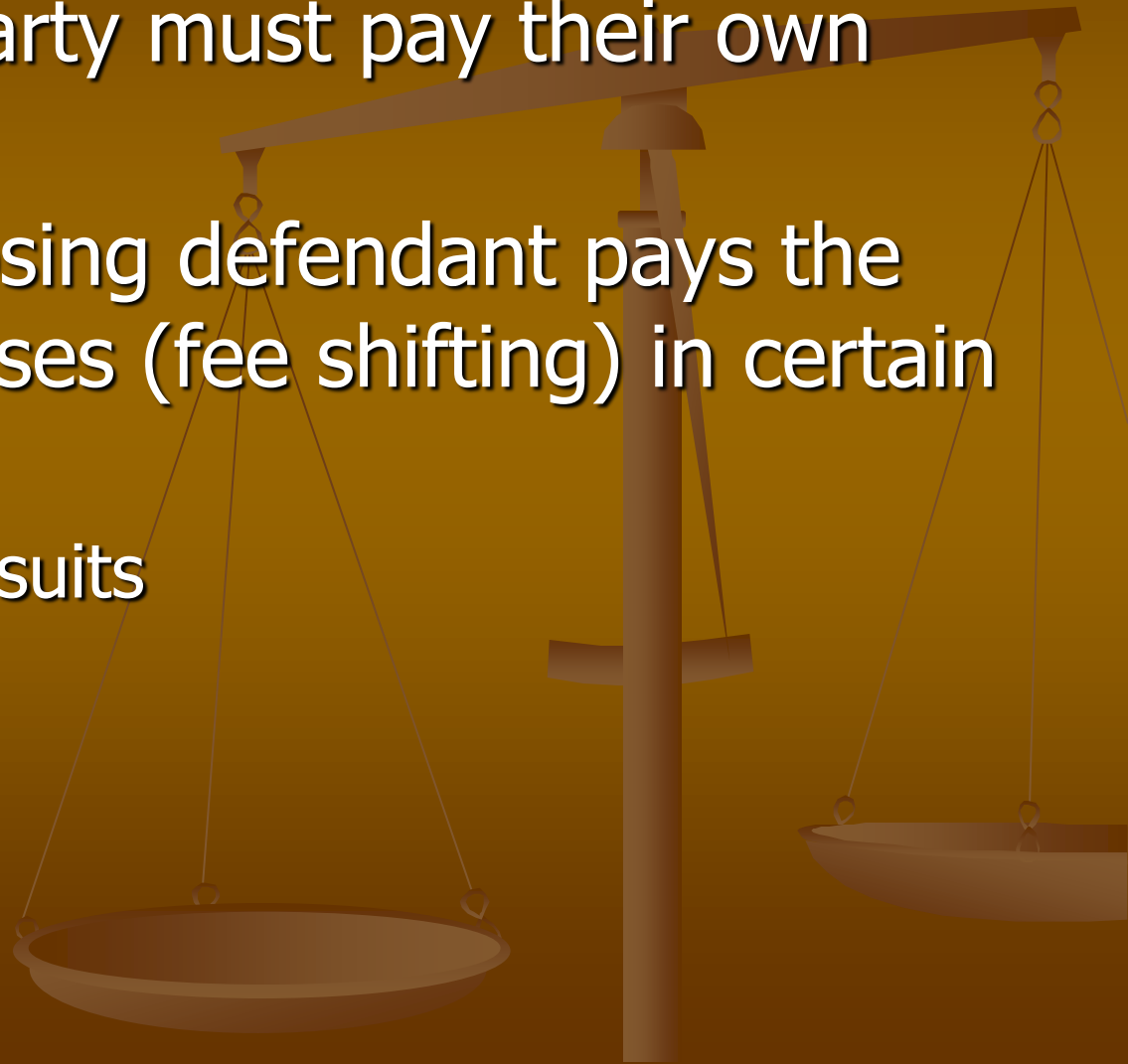
# Barriers to the Court



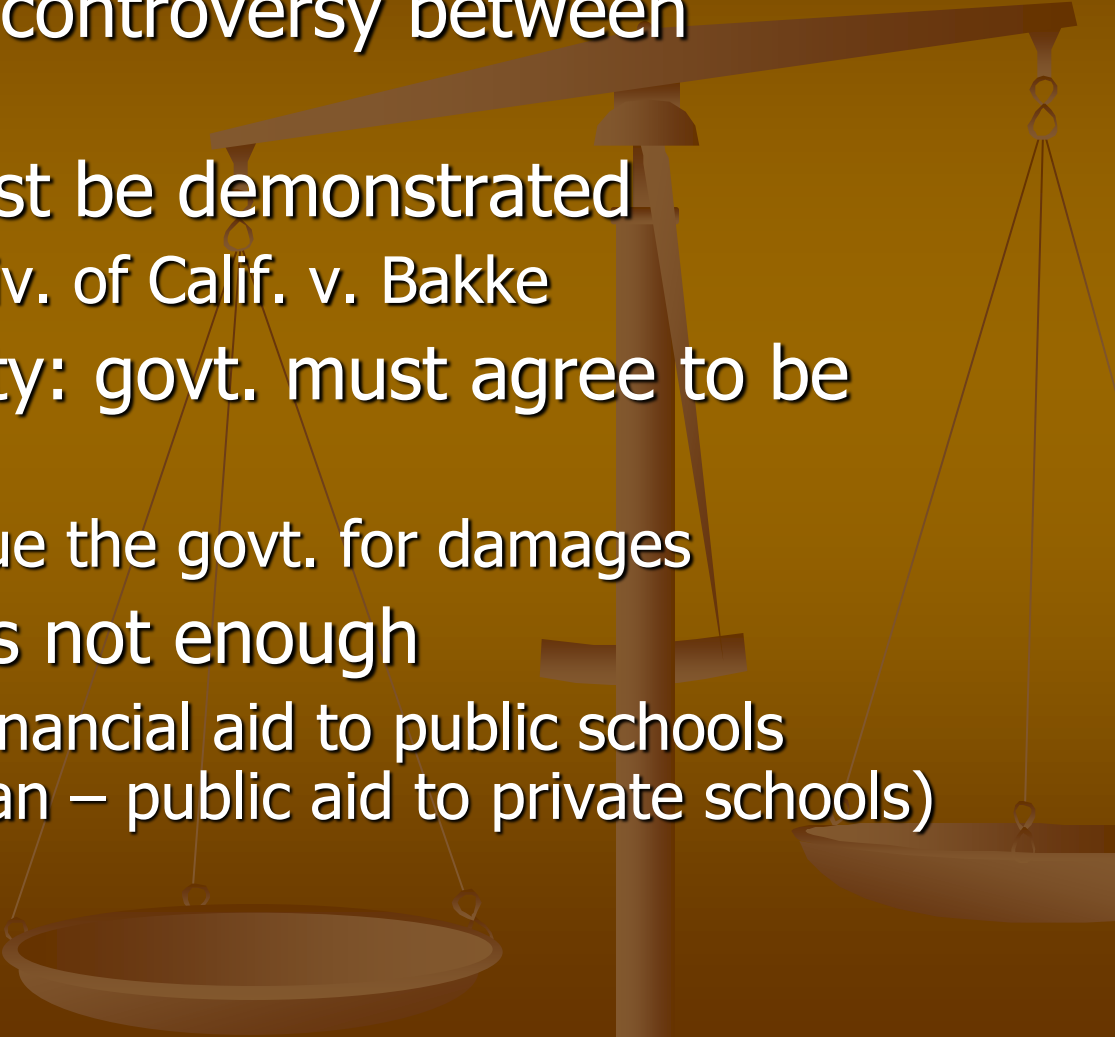
- S.C. rejects most appeals (1-2% are seen)
- Costs of appeal are high
  - In forma pauperis – indigent plaintiff, costs paid by government
    - Gideon v. Wainwright
  - Indigent defendant in a criminal trial: legal counsel provided by govt. free of charge
  - Payment by interest groups (ACLU)

# Fee Shifting

- Usually, each party must pay their own legal expenses
- However, the losing defendant pays the plaintiff's expenses (fee shifting) in certain cases
  - "Section 1983" suits

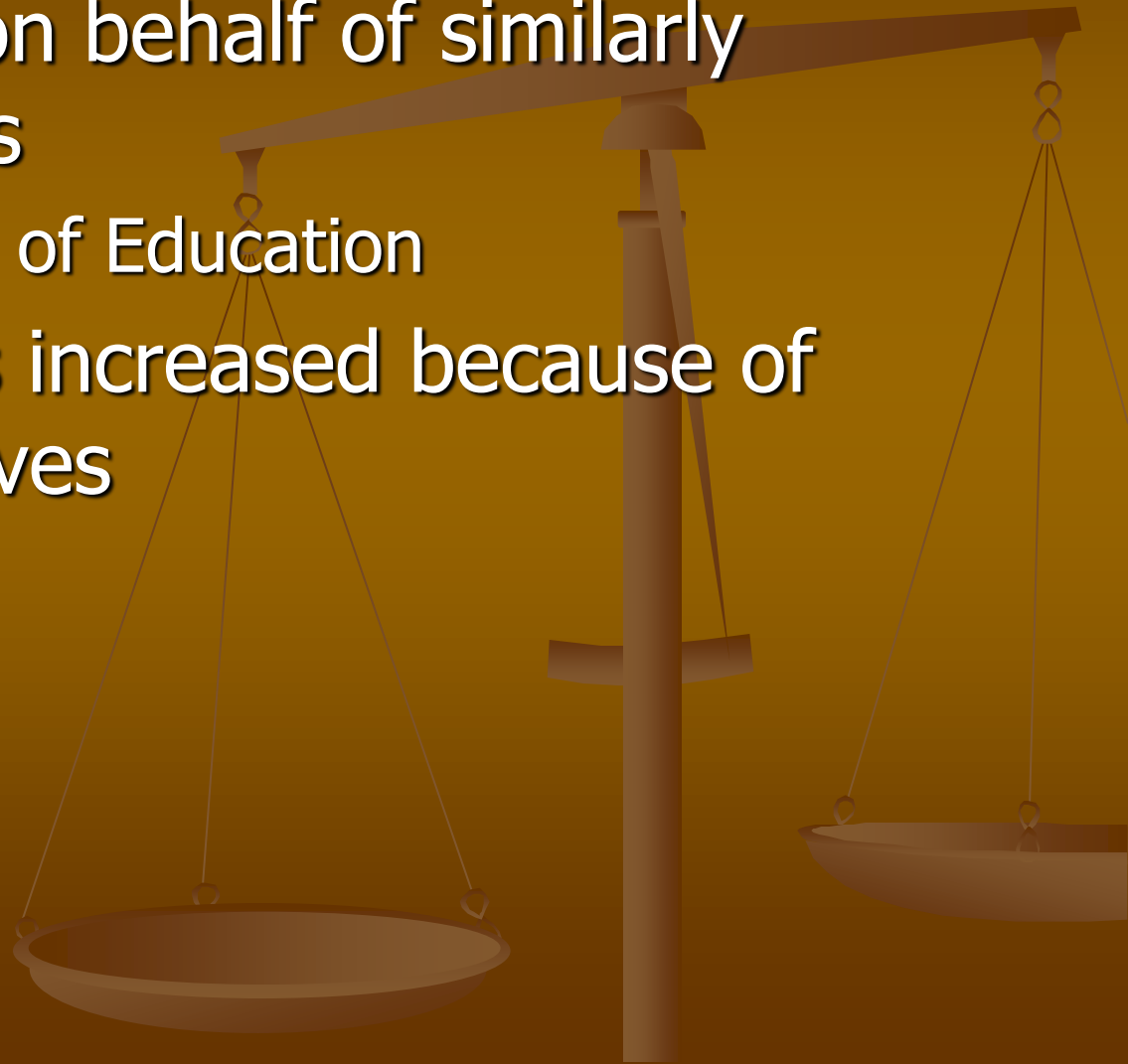


# Standing – Who Can Actually Bring A Case to Court

- Must be an actual controversy between adversaries
  - Personal harm must be demonstrated
    - Regents of the Univ. of Calif. v. Bakke
  - Sovereign immunity: govt. must agree to be sued
    - Liberalized - Ex: sue the govt. for damages
  - Being a taxpayer is not enough
    - Liberalized – Ex: financial aid to public schools (Lemon v. Kurtzman – public aid to private schools)
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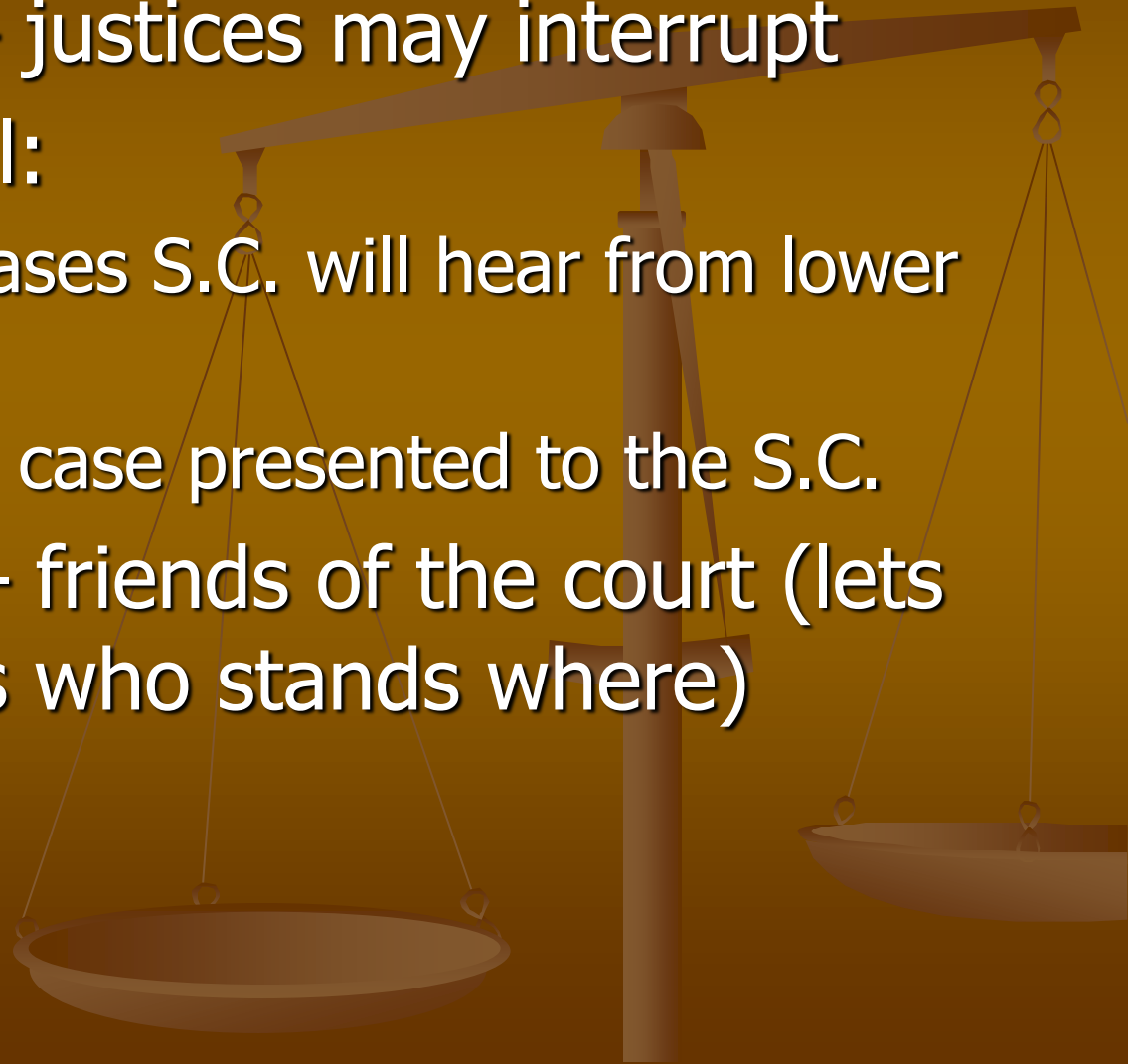
# Class-Action Suits

- A suit brought on behalf of similarly situated persons
  - Brown v. Board of Education
- Number of suits increased because of financial incentives



# Oral Arguments

- One half-hour – justices may interrupt
- Solicitor General:
  - Decides what cases S.C. will hear from lower courts
  - Approves every case presented to the S.C.
- Amicus Curiae – friends of the court (lets the court know who stands where)



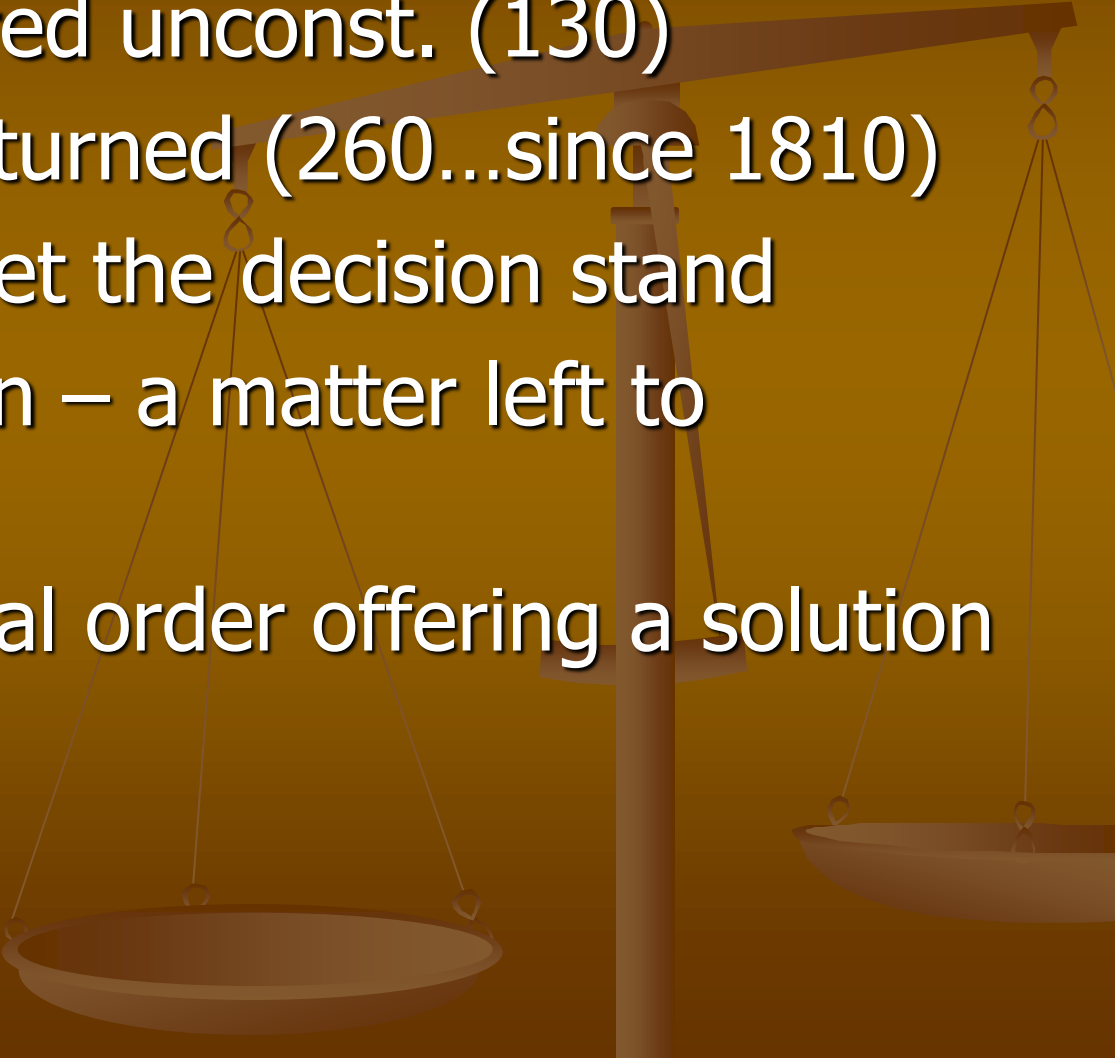


# Conference Procedures



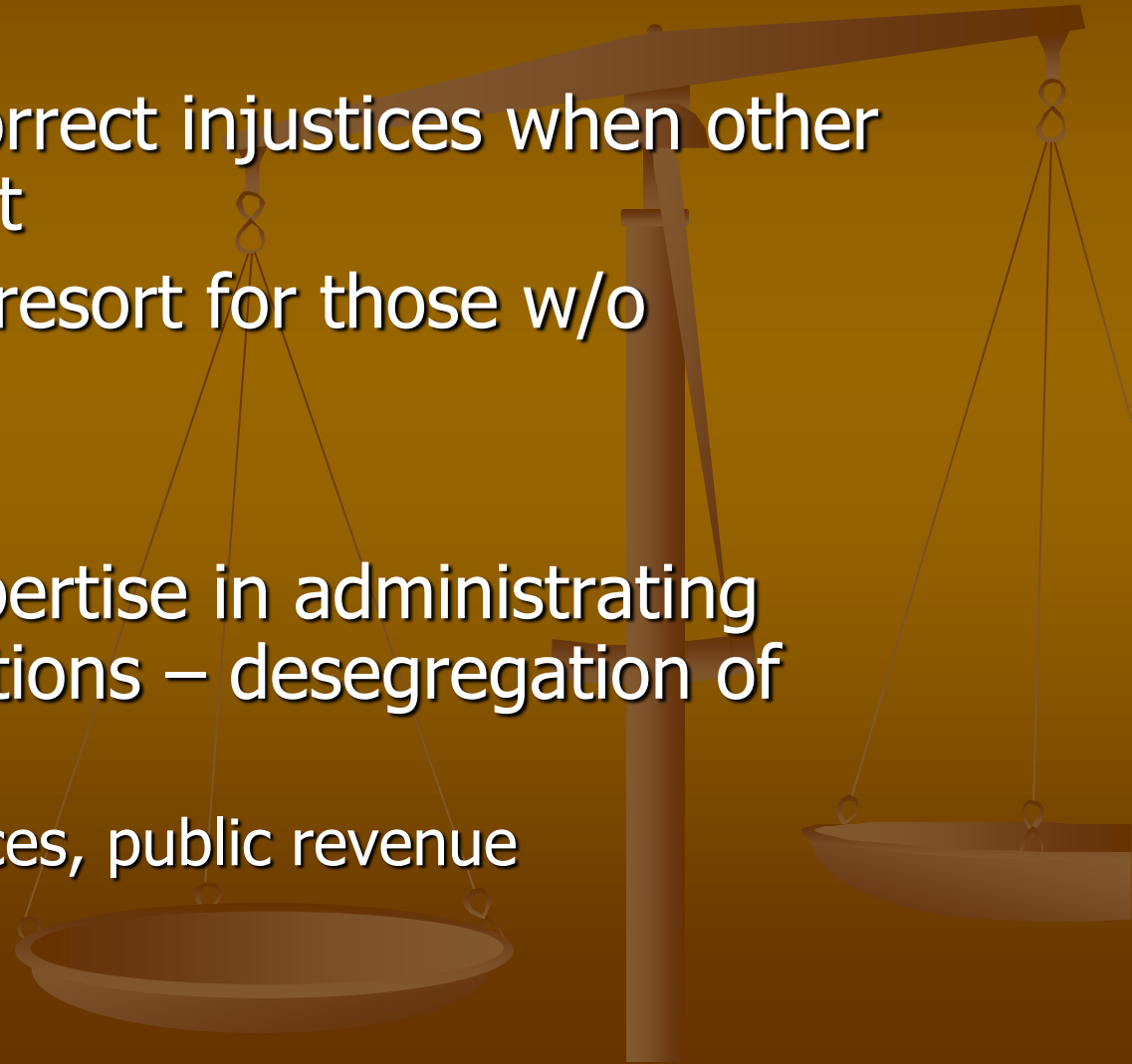
- Role of Chief Justice: speak first, vote last
- Selection of Opinion Writer – critical to the holding in the case
- Four Kinds of Court Opinions:
  - Per curiam: brief and unsigned
  - Opinion of the court – majority opinion
  - Concurring Opinion: agree with the majority, but for different reasons
  - Dissenting Opinion: minority opinion

# Measures of Power

- # of laws declared unconst. (130)
  - Prior cases overturned (260...since 1810)
  - Stare Decisis – let the decision stand
  - Political Question – a matter left to another branch
  - Remedy – judicial order offering a solution
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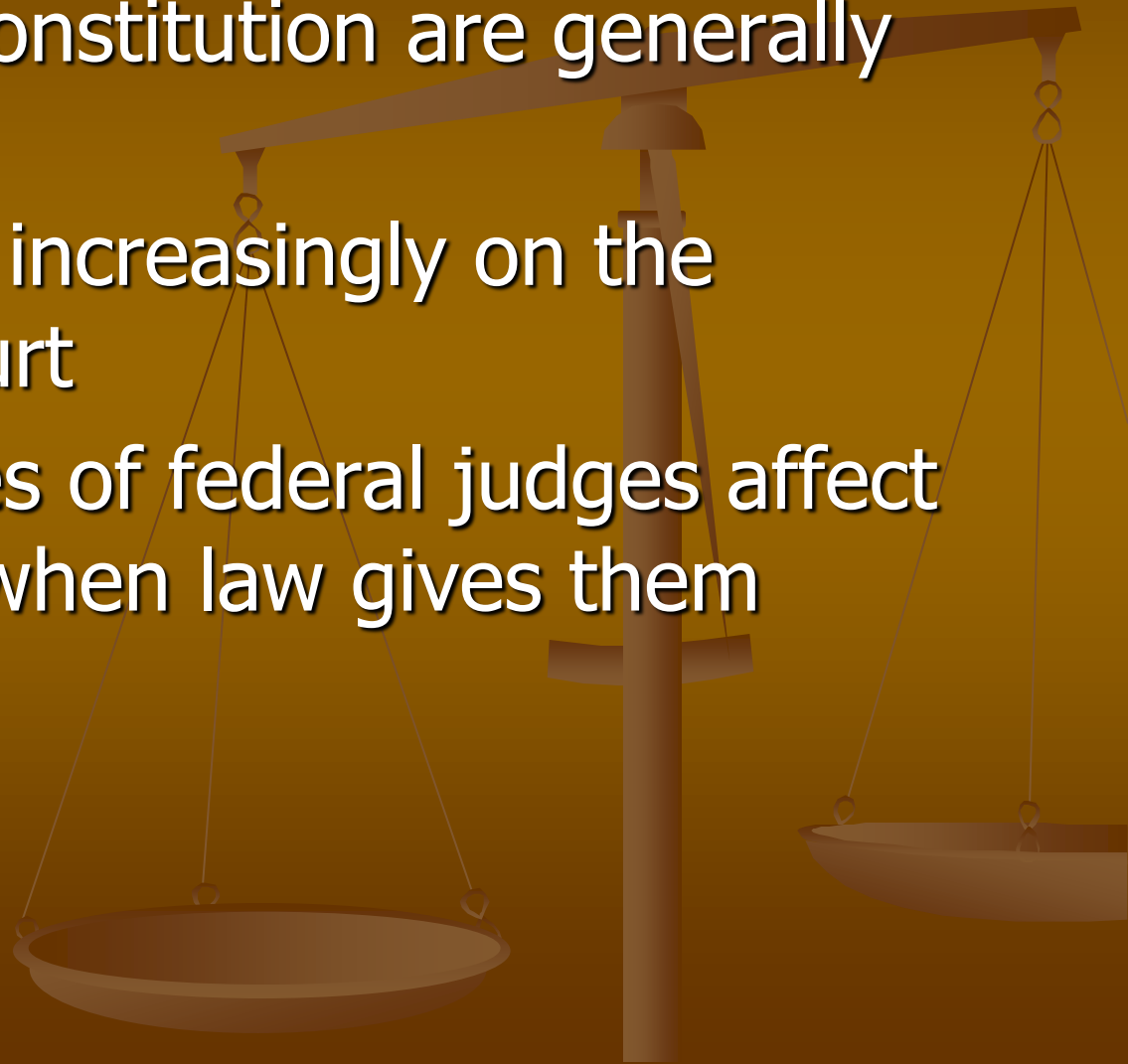
# Views of Judicial Activism

- Supporters:
  - Court should correct injustices when other branches do not
  - Courts are last resort for those w/o power/money
- Critics:
  - Judges lack expertise in administering complex institutions – desegregation of schools
    - Money, resources, public revenue



# Legislation and the Courts

- Laws and the Constitution are generally vague
- Federal govt. is increasingly on the defensive in court
- Political attitudes of federal judges affect their decisions when law gives them latitude



# Checks on Judicial Power

- Supreme Court decisions can be undone:
  - Revising legislation
  - Amending the Constitution
  - Altering jurisdiction of the Court
- Public Opinion:
  - Defying public opinion may be dangerous

